

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc.     )  
(VELCO) and Green Mountain Power Corporation     )  
(GMP) for a certificate of public good, pursuant to     )  
30 V.S.A. Section 248, authorizing VELCO to     )  
construct the so-called Northwest Vermont     )  
Reliability Project, said project to include: (1)     )  
upgrades at 12 existing VELCO and GMP     )  
substations located in Charlotte, Essex, Hartford,     )  
New Haven, North Ferrisburgh, Poultney, Shelburne,     )  
South Burlington, Vergennes, West Rutland,     )  
Williamstown, and Williston, Vermont; (2) the     )  
construction of a new 345 kV transmission line from     )  
West Rutland to New Haven; (3) the reconstruction     )  
of a portion of a 34.5 kV and 46 kV transmission line     )  
from New Haven to South Burlington; and (4) the     )  
reconductoring of a 115 kV transmission line from     )  
Williamstown to Barre, Vermont –     )

Order entered: 11/3/2004

**ORDER RE MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY**

**Background and Positions of the Parties**

On October 14, 2004, the Vermont Department of Public Service ("Department") filed a motion to present supplemental testimony of David Raphael in response to the prefiled testimony of Liz Pritchett. The Department contends that the testimony of Ms. Pritchett is direct testimony on the issue of historic sites, rather than rebuttal testimony in response to Vermont Electric Power Company, Inc.'s ("VELCO") testimony on this issue. The Department argues that, consequently, it is entitled under 3 V.S.A. § 809(c) to "respond and present evidence and argument on all issues involved."

On October 22, 2004, Vermont Citizens for Safe Energy ("VCSE") filed a response to the Department's October 14 motion. In its response, VCSE claims that Mr. Raphael's testimony is untimely and that Mr. Raphael is not qualified to address the impact of VELCO's proposed project on historic sites. VCSE's memorandum further requests that, if the Vermont Public Service Board ("Board") does allow Mr. Raphael's testimony, that it strike certain portions of the testimony.

On October 25, 2004, the Department filed comments in response to VCSE's October 22 filing. The Department reiterates its contention that Ms. Pritchett's testimony is in the nature of direct, rather than rebuttal, testimony, and that the design detail phase of the proceedings provide the first opportunity to respond to Ms. Pritchett's testimony. Further, the Department contends that Ms. Pritchett's primary reliance on the Quechee Test<sup>1</sup> for analyzing the impacts of VELCO's proposed project upon historic sites, rather than the separate analysis used by the Environmental Board,<sup>2</sup> qualifies Mr. Raphael to respond to Ms. Pritchett's testimony.

On October 29, VCSE filed a response to the Department's October 25 filing, contending that Ms. Pritchett did apply the appropriate analysis in her prefiled testimony, in that the Environmental Board analyses governing historic sites by necessity include the Quechee test.

### **Discussion and Conclusion**

Ms. Pritchett's testimony was filed on a separate schedule from other rebuttal testimony for the simple reason that VELCO's direct testimony on historic sites was filed during the rebuttal stage of the hearings. At the time that VELCO filed its direct testimony on this issue, VCSE requested an opportunity to present rebuttal testimony. Due to the timing of the petitioner's filing on this issue, VCSE's request was timely. No other party, including the Department, requested the same opportunity.<sup>3</sup>

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1. *In re Quechee Lakes Corp.*, 1986 WL 58689 (Vt. Env. Bd., Jan. 13, 1986).

2. *In re Middlebury College*, 1990 WL 207469 (Vt. Env. Bd., Jan. 26, 1990); *In re Omya, Inc. And Foster Brothers Farm, Inc.*, 1999 WL 33227550 (Vt. Env. Bd., May 25, 1999).

3. We note that the Division of Historic Preservation, which is part of the same administration as the Department, did file testimony on this issue.

The Department's argument that 3 V.S.A. § 809(C) requires the Board to allow Mr. Raphael's testimony is unavailing. If the Department wished the opportunity to present testimony on historic sites, it could have requested the same opportunity that VCSE requested.<sup>4</sup> If the Department believed that Ms. Pritchett's testimony is outside the scope of proper rebuttal testimony, it could have objected to the testimony.<sup>5</sup> Because the Department neither timely requested the opportunity to file testimony on historic sites, nor objected to Ms. Pritchett's testimony, we deny the Department's October 14 motion.

SO ORDERED.

Dated at Montpelier, Vermont, this 3<sup>rd</sup> day of November, 2004.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 3, 2004

ATTEST: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

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4. Nor did the Department's fellow state agency, the Division for Historic Preservation, request an opportunity to respond to VELCO's direct case on historic issues, although the Division did present earlier testimony on these issues.

5. Board Rule 2.216(C) provides for objections to prefiled testimony.